SINGAPORE REPORTS

QUEK CHOON HUAT v. R.M. SEOW & ANOR.

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) December 5, 1980]

[Singapore — Civil Appeal No. 38 of 1980]

Land Law — Specific performance application — Whether there was concluded agreement for sale of property — Construction of correspondence between parties.

The plaintiffs in this case applied for and obtained an order for specific performance of an agreement alleged to have been entered into by the plaintiffs and the defendant whereby the plaintiffs agreed to purchase and the defendant agreed to sell the property known as No. 3 Fernhill Road, Singapore, for the sum of $140,000. Chua J. construed three letters which passed between the parties and dated June 6, 1979, June 27, 1979 and July 9, 1979 and held that "a contract may be made by letters and that the mere reference in them to a future formal contract will not prevent their constituting a binding bargain." Hence, the learned judge concluded that the said three letters constituted a binding contract. The defendants appealed.

Held, allowing the appeal: the letter of July 9, 1979 from the appellant's solicitors showed that the appellant had contemplated and intended that the bargain would be struck in the usual manner by the parties signing and exchanging an agreed Agreement for Sale and Purchase prepared by solicitors.

Cases referred to:-

(1) *Bonnewell* v. *Jenkins* (1878) 8 Ch. D. 70.

(2) *Koh Peng Moh* v. *Tan Chwee Boon* [1962] M.L.J. 353.

In the court below (Suit No. 259 of 1980) *Roop Parkash* and *Aisha Alkaff (Miss)* appeared for the plaintiffs. *Robert Yap* and *Teo Soon Kok* were counsel for the defendant. The following judgment was delivered:

Cur. Adv. Vult.

Chua J.: The plaintiffs instituted an action against the defendant to obtain, *inter alia,* specific performance of an agreement alleged to have been entered into by the plaintiffs and the defendant whereby the plaintiffs agreed to purchase and the defendant agreed to sell the property known as No. 3, Fernhill Road, Singapore, for the sum of $140,000.

The plaintiffs applied by way of summons-in-chambers under Order 81 for specific performance of the said alleged agreement. The summons comes before me for hearing. The parties inform me that they have agreed that this hearing should be dealt with as if it is the trial of the action and that there is only one issue to be determined and that is, whether or not there is a concluded contract between the parties to this action for the purchase and sale of No. 3 Fernhill Road.

The matter involves solely the question whether on the true construction of a few letters passing between the plaintiffs and the defendant there is a concluded contract.

The first letter, dated June 6, 1979, is a letter from Messrs. Francis T. Seow acting on behalf of the first plaintiff. This is to Messrs. Battenberg & Talma:

"Re: *Apt. 3, Fernhill Apartment*

We act for Mdm. Rauni Marjatta Seow, who instructs us that she wishes to purchase the above property, subject to title being in order, at a price of $140,000.

We are informed that you act for Mr. Gary Quek, the owner of the above property.

If you are similarly instructed, pleease let us have the title deeds and the Agreement for Sale and Purchase for our necessary action."

The next letter dated July 9, 1979, is one from Messrs. Battenberg & Talma to Messrs. Francis T. Seow and it reads:

"Re: *Apt. 3, Fernhill Apartment*

We thank you for your letter of the 6th instant the contents of which are noted.

We are taking our client's instructions and shall revert to you in due course."

The third letter is again from Messrs. Francis T. Seow to Messrs. Battenberg & Talma dated June 27, 1979, and is in these terms:

"Re: *Apt. 3, Fernhill Apartment*

We write to confirm the tele-conversation between yourself and our Miss Alkaff this afternoon, whereby you informed us that you have been instructed to proceed with the sale of the above property to our client.

Pending the signing of the Sale Agreement, we are instructed to forward herewith a cheque for the sum of $14,000 being the 10% deposit, to be held by you as stakeholders.

Kindly acknowledge receipt."

The fourth letter dated July 9, 1979, is from Messrs. Battenberg & Talma to Messrs. Francis T. Seow and reads:

"Re: *Apt. 3, Fernhill Apartment*

We are in receipt of your letter of the 27th ultimo and the enclosure.

We have written to the existing mortgagees for the title deeds and shall forward you the same upon receipt.

Meanwhile we forward herewith Agreement for Sale in duplicate for your client's signature and return to us.

Kindly confirm your client is a Singapore citizen."

It is submitted on behalf of the plaintiffs that the first, third and fourth letters together constitute a binding contract for the sale and purchase of the property.

The events that took place after the fourth letter can be summarised as follows. On August 10, 1979, Messrs. Francis T. Seow wrote to the defendant's solicitors: — "We shall be grateful if you will let us peruse the title deeds in respect of the above property before we return the Sale & Purchase Agreement duly executed by our clients". and they further said: "Incidentally, we would like to inform you that the above property will be purchased in the joint names of Francis T. Seow and Rauni Marjatta Seow. The former is a Singapore citizen whilst the latter is a permanent resident. Anyway, an application has been made to the Land Dealings Unit for their approval of the purchase."

On August 14, 1979, Messrs. Battenberg & Talma replied saying that the defendant had no objection to the property being purchased in the joint names of Mr. & Mrs. Seow but asked for confirmation that in the event that approval was not granted to Mrs. Seow to purchase the property Mr. Seow would take over the purchase himself.

On September 13, 1979, Messrs. Battenberg & Talma wrote to Messrs. Francis T. Seow asking for acknowledgment of receipt of the title deeds and for

the return of the agreement in duplicate duly signed by the plaintiffs.

On the same day Messrs. Francis T. Seow acknowledged receipt of the title deeds and returned the executed agreement which had been amended by including two special conditions.

On September 14, 1979, Messrs. Battenberg & Talma wrote objecting to the inclusion of the two special conditions and indicated that unless they were deleted the defendant could not agree to sell the property. They also said: "Our client is tentatively expected to return to Singapore sometime next month and the agreement can only be signed then. On this basis we are instructed to agree to the date of completion as amended."

On September 20, 1979, Messrs. Francis T. Seow replied agreeing to the deleting of the two special conditions and informing the defendant's solicitors that the plaintiffs had to move out of their house by September 29 and that they would be grateful if they could get the agreement executed in time.

On October 3, 1979, Messrs. Francis T. Seow wrote to Messrs. Battenberg & Talma referring to their telephone conversation and expressing concern over the delay on the defendant's part in executing the agreement and intimating that the first plaintiff was in urgent need to complete the purchase early as she had sold her present house and had to vacate the premises by October 15, 1979, and requesting that all efforts be taken to expedite matters.

On October 5, 1979, Messrs. Francis T. Seow wrote again asking that Messrs. Battenberg & Talma impress upon the defendant the plaintiffs' urgent need for the completion.

Messrs. Francis T. Seow were informed by Messrs. Battenberg & Talma that the defendant would be back in Singapore at the end of October 1979, and on October 26, 1979, they wrote to Messrs. Battenberg & Talma saying that they expect to receive their client's copy of the agreement duly signed by the defendant by the following week and asked that the signed agreement be returned immediately.

Messrs. Francis T. Seow received no reply and on November 1, 1979, they wrote asking for an early reply and commenting that they could not see why the defendant could not complete the sale now. Again no reply was received and on November 13, 1979, Messrs. Francis T. Seow wrote to Messrs. Battenberg & Talma giving them notice that the defendant was required to proceed with the sale before the expiration of seven days and if he failed to do so the plaintiffs would take legal action.

On November 14, 1979, Messrs. Battenberg & Talma wrote saying that the defendant had now returned to Singapore and they had just seen him and that the defendant no longer wished to sell his property and he had not signed the agreement and that the matter was therefore abortive and they returned the $14,000 deposit.

As I have said the plaintiffs alleged that the exchange of letters of June 6, 1979, June 27, 1979, and July 9, 1979, constituted an agreement for the sale of the property.

Whether there is a binding contract or not depends on the construction of these three letters. It is clear from the authorities that a contract may be made by letters and that the mere reference in them to a future formal contract will not prevent their constituting a binding bargain. (See *Bonnewell* v. *Jenkins*[1]).

It seems to me that in fact the plaintiffs are correct in treating the third letter of June 27, 1979, as an acceptance by the defendant of their offer to purchase the property. Further than that it seems to me that the fourth letter of July 9, 1979, is an affirmation that the parties have come to agreement on the sale of the property.

The defendant relies on the case of *Koh Peng Moh* v. *Tan Chwee Boon*[2] but this case and the other cases cited by counsel for the defendant are cases where the transactions which were to produce a contract was conducted on the condition that they were to be subject to contract. This clearly is not the case here.

I have come to the conclusion that the three letters constitute a binding contract.

It is also contended by the defendant that the note or memorandum, in this case the correspondence, does not satisfy the requirements of section 4 of the Statute of Frauds. It is submitted that for the note or memorandum to satisfy the Statute the said note or memorandum must contain a recognition and/or admission that a contract existed between the parties and that nowhere in the said correspondence was there such a recognition or admission made. There is no substance in this submission. The correspondence clearly shows that a contract has in fact been entered into.

There will be judgment for the plaintiffs and costs.

From the above judgment the defendant appealed to the Court of Appeal.

COURT OF APPEAL.

Robert Yap and *Teo Soon Kok* for the appellants.

Roop Parkash for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): This is an appeal from an order for specific performance by Chua J. on an Order 81 application. At the hearing of the application, although no defence had been delivered, the parties agreed that it should be dealt with as if it was the trial of the action and that the only issue for determination was whether or not, on the true construction of a few letters passing between their respective solicitors, there was a concluded agreement for sale of the property known as No. 3 Fernhill Road, Singapore.

Chua J. held that a concluded contract by correspondence had been entered into by the parties to the action on the true construction of four letters passing between their solicitors. At the conclusion of the

hearing of the appeal we allowed the appeal and now give our reasons.

The first letter, dated June 6, 1979 is a letter from the respondents' solicitors to the appellant's solicitors. It reads: —

"Dear Sirs,

Re: *Apt. 3, Fernhill Apartment*

We act for Mdm. Rauni Marjatta Seow, who instructs us that she wishes to purchase the above property, subject to title being in order, at a price of $140,000.

We are informed that you act for Mr. Gary Quek, the owner of the above property.

If you are similarly instructed, please let us have the title deeds and the Agreement for Sale and Purchase for our necessary action.

Yours faithfully,

.....".

It is to be observed that the words are "wishes to purchase the above property, subject to title being in order, at a price of $140,000" and not simply "offers to purchase the above property at a price of $140,000". It is also to be observed that the letter ends with the sentence asking for "the Agreement for Sale and Purchase for our necessary action".

It is said on behalf of the respondents that that letter contains an offer by the respondents to purchase the property referred to on the terms of an open contract and that if that offer was accepted the parties would be immediately bound. We do not agree and construe that letter, in particular the last sentence, as either indicating or could reasonably be construed by the owner as indicating, an intention that the offer to purchase his property was subject to the parties signing an "Agreement for Sale and Purchase", a document which in the ordinary course of transactions relating to the sale of land would be the document which constitutes the contract of sale.

The next letter, dated June 11, 1979 is of no assistance. Then the respondents' solicitors on June 27, 1979 wrote to the appellant's solicitors as follows: —

"Dear Sirs,

Re: *Apt. 3, Fernhill Apartment*

We write to confirm the tele-conversation between yourself and our Miss Alkaff this afternoon, whereby you informed us that you have been instructed to proceed with the sale of the above property to our client.

Pending the signing of the Sale Agreement, we are instructed to forward herewith a cheque for the sum of $14,000 being the 10% deposit, to be held by you as stakeholders.

Kindly acknowledge receipt.

Yours faithfully,

.....".

On behalf of the respondents it is said that this letter is evidence of an oral acceptance by the appellant of the first respondent's offer and that a binding contract on open contract terms came into existence when a member of the firm of solicitors acting for the appellant orally informed Miss Alkaff of the firm of solicitors acting for the respondents that his firm "had been instructed to proceed with the sale of the above property to (the first respondent)". It is to be observed that the words the gentleman is said to have spoken are that his firm "have been instructed to proceed with the sale of the above property" and not that his firm "have been instructed by the appellant to accept the offer to purchase the above property".

Then comes the next letter relied on by the respondents which is the letter dated July 9, 1979 from the appellant's solicitors to the respondents solicitors: —

"Dear Sirs,

Re: *Apt. 3, Fernhill Apartment*

We are in receipt of your letter of the 27th ultimo and the enclosure.

We have written to the existing mortgagees for the title deeds and shall forward you the same upon receipt.

Meanwhile we forward herewith Agreement for Sale in duplicate for your client's signature and return to us.

Kindly confirm your client is a Singapore citizen.

Yours faithfully,

.....".

In our opinion that letter is not, as said on behalf of the respondents, a recognition or affirmation that the parties have earlier come to an agreement on the sale of the property on open contract terms. In our view, the penultimate sentence which referred to the "Agreement for Sale in duplicate" enclosed with that letter is a clear indication that up to that stage the appellant had contemplated and intended that the bargain would be struck in the usual manner by the parties signing and exchanging an agreed Agreement for Sale and Purchase prepared by solicitors.

For these reasons we allowed the appeal.

Appeal allowed.

Solicitors: *Battenberg & Talma; Francis T. Seow.*

LOK SHOON SHING v. QUEK SWEE KIT & ORS.

[A.Cr.J. (Wee Chong Jin C.J.) March 25, 1981]

[Singapore — Magistrate's Appeal No. 91 of 1979]

Copyright — Gramophone records — Possession for sale of pirated copies — Copies in cassette tapes — Whether copyright subsists — Whether exact reproduction — Copyright (Gramophone Records & Government Broadcasting) Act (Cap. 188), ss. 2 & 3(1).

The appellant appealed against his conviction on six charges of having in his possession for sale pirated copies of gramophone records contrary to section 3(1) of the Copyright (Gramophone Records & Government Broadcasting) Act (Cap. 188). The alleged pirated copies were cassette tapes found in the premises of Corina Music Centre of which the appellant was the sole proprietor. The main contention in this appeal was that the prosecution had failed to prove that the cassette tapes in the possession of the appellant were copies of the gramophone records in which copyright subsisted.

Held: in this case there was ample evidence to hold that there was sufficient *prima facie* evidence that the cassettes were copies of the gramophone records within the meaning of the Act.

Case referred to:-

(1) *Kwah Hai Gong* v. *Public Prosecutor* [1979] 1 M.L.J. 16.